

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6283

BILL NUMBER: HB 1010

DATE PREPARED: Jan 17, 2002

BILL AMENDED: Jan 17, 2002

SUBJECT: Child Pornography.

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FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill permits forfeiture of equipment used in preparing or disseminating child pornography or material harmful to minors. It prohibits making available to another person a computer containing material harmful to minors. It raises the penalty for child exploitation from a Class D felony to a Class C felony. It raises the penalty for possession of child pornography from a Class A misdemeanor to a Class D felony. It specifies that the laws concerning child exploitation, possession of child pornography, and obscenity and pornography apply to digitized images. It provides that a person who makes matter harmful to minors available through the Internet, a computer, or other display or dissemination may not be convicted of dissemination of matter harmful to minors unless: (1) the matter is obscene; (2) the matter is child pornography; or (3) the person distributes the matter believing or intending that the recipient is a child less than 18 years of age.

Effective Date: July 1, 2002.

Explanation of State Expenditures: The bill would increase the penalty for child exploitation from a Class D felony to a Class C felony and expand the definition of child exploitation to include digitized images and making available to another person a computer with matter that depicts or describes sexual conduct by a child. State expenditures would increase if an offender is incarcerated in a state prison for a longer period of time. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from two to eight years. The average length of stay for an offender sentenced to state prison for a Class D felony offense is less than a year and the average length of stay in DOC facilities for all Class C felony offenders is approximately two years.

Also, the bill would increase the penalty for possession of child pornography from a Class A misdemeanor to a Class D felony. The definition of this crime would be expanded to include digitized images. State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class

D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

The average expenditure to house an adult offender was \$22,131 in FY 2000. Individual facility expenditures ranged from \$16,442 to \$40,312. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Between 1996 and 2000, based on a single day sample of the state prison population, no one was incarcerated in a state facility for disseminating matter harmful to minors, a Class D felony. There are no data available to estimate the impact of excluding material sent over the Internet, unless the matter is obscene, is child pornography, or was deliberately sent to a child the sender knows to be less than 18 years of age.

Explanation of State Revenues: No change would likely occur in state revenue as a result of increasing the penalty for child exploitation since criminal fines and court fees are the same for either Class D or C felonies.

As a result of increasing the penalty for possession of child pornography, more revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class A misdemeanor is \$5,000 while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are \$120.

Explanation of Local Expenditures: If an offender convicted of child pornography is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class A misdemeanor is up to one year. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

Explanation of Local Revenues: (Revised) No additional revenues would be expected since the court fees for felonies and misdemeanors are both \$120.

Assets used by the defendant can be seized by the local law enforcement agency and sold to cover the law enforcement costs associated with the arrest and prosecution. As amended, assets that are eligible for seizure would not include assets if the actual owner of the equipment did not knowingly permit the equipment to be used in child exploitation or the possession of child pornography.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs Association, Department of Correction.